

ANALYSIS

This ordinance grants a water pipeline franchise to the La Habra Utility Authority, a Joint Powers Authority formed pursuant to the California Government Code, to transport and distribute water for a period of fifteen (15) years.

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NMT:

Requested: 8/22/16
Revised: 8/22/16

ORDINANCE NO. _____

An ordinance granting a water pipeline franchise to the La Habra Utility Authority, for the transportation and distribution of water for a period of fifteen (15) years.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Franchise Term, Grant.

The right, privilege, and franchise is granted to the La Habra Utility Authority ("Franchisee"), and its successors and assigns, for a period of fifteen (15) years, beginning on the effective date of this ordinance, to lay, construct, reconstruct, maintain, operate, renew, repair, change the size of, remove, or abandon in place pipes and pipelines for the transportation of water, waste water, mud, and other liquid substances, including those substances that are generally accepted as appropriate for the treatment of water, excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., and amendments thereto (provided, however, that this exclusion shall not apply to substances in such amounts that are generally accepted as appropriate for the treatment of water), together with all manholes, valves, cathodic protection systems, appurtenances, and service connections necessary or appropriate for the operation of said pipes or pipelines, adjunct communication lines, including poles, conduits, wires, cables, or other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate solely for the Franchisee's operations in, under, along, or across any and all highways as defined in Section 16.36.080 of the Los Angeles County Code, now or hereafter dedicated to public use in the

unincorporated territory of the County of Los Angeles ("County"), State of California, within the franchise areas described hereinbelow and depicted on the exhibit maps attached hereto:

Part A. La Habra Heights Unincorporated Area:

Those unincorporated areas of the County lying within the following described boundaries:

Beginning at the intersection of the westerly boundary line of Hacienda Boulevard with the southerly boundary line of the County of Los Angeles, California, said southerly boundary line of Los Angeles County being also the northerly boundary line of the City of La Habra, in the County of Orange, California, and said westerly boundary line of Hacienda Boulevard being also the westerly boundary line of said County of Los Angeles, California, and the easterly boundary line of the City of La Habra Heights, California; thence easterly along said southerly boundary line of the County of Los Angeles, California, to the southeast corner of Tract No. 29465, recorded in Map Book 735, Page 32 and Page 33, of Tract Maps in the office of the Registrar-Recorder/County Clerk, of the County of Los Angeles, California (hereinafter, in the "Recorder's Office"); thence northerly along the easterly boundary line of said Tract No. 29465, to the most southerly southwest corner of Lot 6 of said Tract No. 29465, being also the northwest corner of Lot 13 of Tract No. 21780, recorded in Map Book 606, Page 61 and Page 62, of Tract Maps in the Recorder's Office; thence southeasterly along the southerly boundary line of said Lot 6 to the southeast corner thereon; thence northerly along the easterly boundary lines of Lot 6 and Lot 5 of said Tract No. 29465, to

the northeast corner of said Lot 5; thence northwesterly along the northerly boundary line of said Lot 5 to the easterly boundary line of Lot 3 of said Tract No. 29465; thence northerly along the easterly boundary lines of Lot 3, Lot 2, and Lot 1 of said Tract No. 29465, to the northeast corner of said Lot 1; thence westerly along the northerly boundary line of said Lot 1 to the northwest corner thereon, being also the northeast corner of Lot 44 of Tract No. 28693, recorded in Map Book 728, Page 85 through Page 87, inclusive, of Tract Maps in the Recorder's Office; thence continuing westerly along the northerly boundary line of said Lot 44, and its westerly prolongation to the southeast corner of Tract No. 13106, recorded in Map Book 291, Page 29 and Page 30, of Tract Maps in the Recorder's Office; thence continuing westerly along the southerly boundary line of said Tract No. 13106, and its westerly prolongation (S°89 55' 40"W), to the intersection with the centerline of Citrus Street; thence northwesterly and westerly along the centerline of Citrus Street, and its westerly prolongation, to that point on said centerline where Citrus Street becomes Avocado Crest Road; thence continuing westerly along the centerline of Avocado Crest Road, and its westerly prolongation to the westerly boundary line of Hacienda Boulevard; thence southerly and southwesterly along said westerly boundary line of Hacienda Boulevard to the point of beginning, as the centerlines and boundary lines of said counties, tract maps, boulevards, streets and roads existed on January 1, 2016.

Part B. Rowland Heights Unincorporated Area:

Those unincorporated areas of the County lying within the following described boundaries:

Being all that portion of the Rowland Heights unincorporated area lying within the boundaries of Tract Map No. 30081, recorded in Map Book 751, Page 71 and Page 72, of Tract Maps in the Recorder's Office.

SECTION 2. Consideration; Payment of Fees.

A. Franchisee shall not be responsible for the payment of any granting fee, annual franchise fee, or other fee for the grant of, or exercise of rights under this franchise, but shall be required to comply with all the terms and conditions hereof as consideration for the rights conveyed to Franchisee.

SECTION 3. Reports.

The Franchisee shall during the life of the franchise:

A. File with the County Chief Executive Officer ("CEO"), Director of Real Estate, a report indicating the length of the Franchisee's main lines in highways in the unincorporated areas of Los Angeles, the nominal internal diameter of such main lines and the points where they enter and exit the County unincorporated highways.

B. In the report prepared pursuant to subsection 3.A above, Franchisee shall also show: any change in franchise footage since the end of the most recent franchise report period, if any, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; the diameter of such conduits laid, removed, and/or abandoned in

place; and the footage and internal diameter of main lines in territory annexed or incorporated since the last day of the most recent franchise report period.

SECTION 4. Indemnification, Insurance, and Bonding.

A. This ordinance excludes incorporation by reference of provisions in the County's Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the Franchise to comply with standard County indemnification, insurance, and bonding requirements in conjunction with use of County rights-of-way.

B. Franchisee shall indemnify, defend, and hold harmless the County and its special districts, elected and appointed officers, employees, and agents ("County's agents") from and against any and all liability and expense, including claims and lawsuits for injuries or damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage, including property of the Franchisee, and including pollution liability, defense costs, legal fees, and workers' compensation benefits, based upon, arising from, or relating to either: (1) Franchisee's operations or the services provided by Franchisee, its employees, agents, servants, receivers, contractors, subcontractors, successors, or assignees ("Franchisee's agents") in connection with this franchise; and/or (2) the acts or omissions of Franchisee, Franchisee's agents, or any person in connection with activities or work conducted or performed pursuant to this franchise and arising out of such activities or work. Franchisee shall also indemnify, defend, and hold harmless the County and the County's agents from and against any and all pollution liability, contamination, or environmental degradation liability, including any and all expenses, claims, and lawsuits

for injuries or damages of any nature whatsoever, defense costs, legal fees, and workers' compensation benefits, arising from or relating to any threatened, actual, or alleged discharge, dispersal, release, or escape of any substance into or upon any person, thing, or place, including the land, soil, atmosphere, man-made structure, and/or any above-ground or below-ground watercourse or body of water, in connection with this franchise. The Franchisee shall not be obligated to indemnify the County and County's agents for liability and expense arising from the active negligence of the County or County's agents.

C. The County shall be immediately notified by Franchisee of all discharge, release, or escape of any water, waste water, mud, or other substances from Franchisee's pipelines and appurtenances within the franchise area. All actions to investigate, remove, or remediate any substance reasonably demonstrated to be discharged, dispersed, released, or escaped from Franchisee's pipelines, and to repair or restore Franchisee's pipelines and appurtenances, shall be the sole responsibility of Franchisee and shall be conducted by Franchisee or Franchisee's Agents, in conformance with any and all laws, ordinances, rules, regulations, requirements, and orders whatsoever, present or future, of the federal, state, County, or other applicable local government at Franchisee's sole cost and expense, and shall be immediately undertaken. If Franchisee fails to take any action required pursuant to this section, County may, but shall not be obligated to, take all actions it deems appropriate at Franchisee's expense. Upon written demand by County, Franchisee shall reimburse County for all County expenses reasonably incurred in connection with County's actions

including, but not limited to, all direct and indirect costs relating to investigation, remediation, and removal.

SECTION 5. Transfers and Assignments.

A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof (each of which is hereinafter referred to as an "assignment"), to any other person or entity ("transferee") except with the prior written consent of the CEO, and after the proposed transferee's payment of a transfer fee as detailed in subsection 5.G. As used in this section, "transfer" includes stock transfer and "control" includes actual working control in whatever manner exercised.

B. Franchisee shall give notice to the CEO of any pending assignment, except as excluded in subsection 5.E, and shall provide all documents requested by the CEO, as set forth in subsection 5.F, on which the assignment is predicated. Consent to any such assignment shall only be refused if the CEO finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee, as applicable, is lacking in experience and/or financial ability to meet the franchise obligations. Consent from the CEO shall be conditioned upon the consummation of the assignment on the terms and conditions set forth in the assignment documents delivered to County, the assumption by the transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise, and all information provided CEO under subsection 6.F, below, being true and correct as of the

time of the consummation of the assignment. Upon receipt of such consent from the CEO, Franchisee may proceed to consummate the assignment.

C. Franchisee shall file with the CEO within thirty (30) days after the effective date of any such assignment, a certified copy of the duly executed instrument(s) which officially evidences such assignment. If such duly executed instrument(s) is not filed with the CEO within thirty (30) days after the effective date of such assignment, or if the conditions to consent by the CEO have not been met, then upon expiration of said thirty (30) days, the CEO may notify the Franchisee and the proposed transferee that the assignment is not deemed approved by the County. The CEO may then administratively determine that the assignment has no force or effect or that the franchise is forfeited and the Board may repeal this franchise.

D. As a condition to the granting of consent to such assignment, the Board may impose such additional terms and conditions upon this franchise, and upon the proposed transferee which the CEO recommends or the Board deems to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant Franchisee the right to complete an assignment except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of the Franchisee, or otherwise.

E. Notwithstanding the foregoing, shareholders, partners, and/or any other person or entity owning an interest in Franchisee may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, divestment, or other change is effected in

such a way as to give control of, or a twenty-five percent (25%) or more interest in, Franchisee, to any person or persons, corporation, partnership, or legal entity other than the person or entity with the controlling interest in the Franchisee on the effective date of the franchise or the effective date of the last approved assignment, consent thereof shall be required as otherwise provided in this Section 6.

F. Upon notice by Franchisee of any pending assignment, the proposed transferee shall submit an assignment application to the CEO, which shall contain, at a minimum:

1. Identification of the proposed transferee which indicates the corporate or business entity organization, including the submission of copies of the corporate or business formation papers (e.g., articles of incorporation and by-laws, limited partnership agreements, operating agreements), and the names and addresses of any parent or subsidiary of the proposed transferee(s), or any other business entity owning or controlling the proposed transferee in part or in whole;

2. A current financial statement, which has been audited by a certified public accountant demonstrating conclusively to the satisfaction of the CEO that the proposed transferee has all the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years, and a statement of changes in financial position; however, if the proposed transferee has been in existence for less than three (3) years, then for such period of existence;

3. A copy of the proposed agreement of sale, letter of understanding, or other documentation which details the pending assignment ("assignment documents"); and

4. Other information which may be required by the CEO to assess the capability of the proposed transferee to operate and maintain the franchise.

G. The proposed transferee's payment of the transfer fee shall be submitted with the Franchisee's request for the County's consent to any assignment described in subsection 5.A and shall be determined as follows:

1. Consent to assignment or any other action, in which the County does not elect to modify the franchise by adoption of an amending ordinance: two thousand five hundred dollars (\$2,500).

2. Consent to assignment or any other action, in which the County elects to modify the franchise by adoption of an amending ordinance: five thousand dollars (\$5,000).

3. In the event County's actual costs to process the proposed assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, exceed the fees detailed above, the proposed transferee may be required to pay any additional costs incurred by the County in processing the Franchisee and/or proposed transferee's request for assignment. Such costs shall be paid by the proposed transferee prior to final consideration of the request by the CEO or the Board, as applicable.

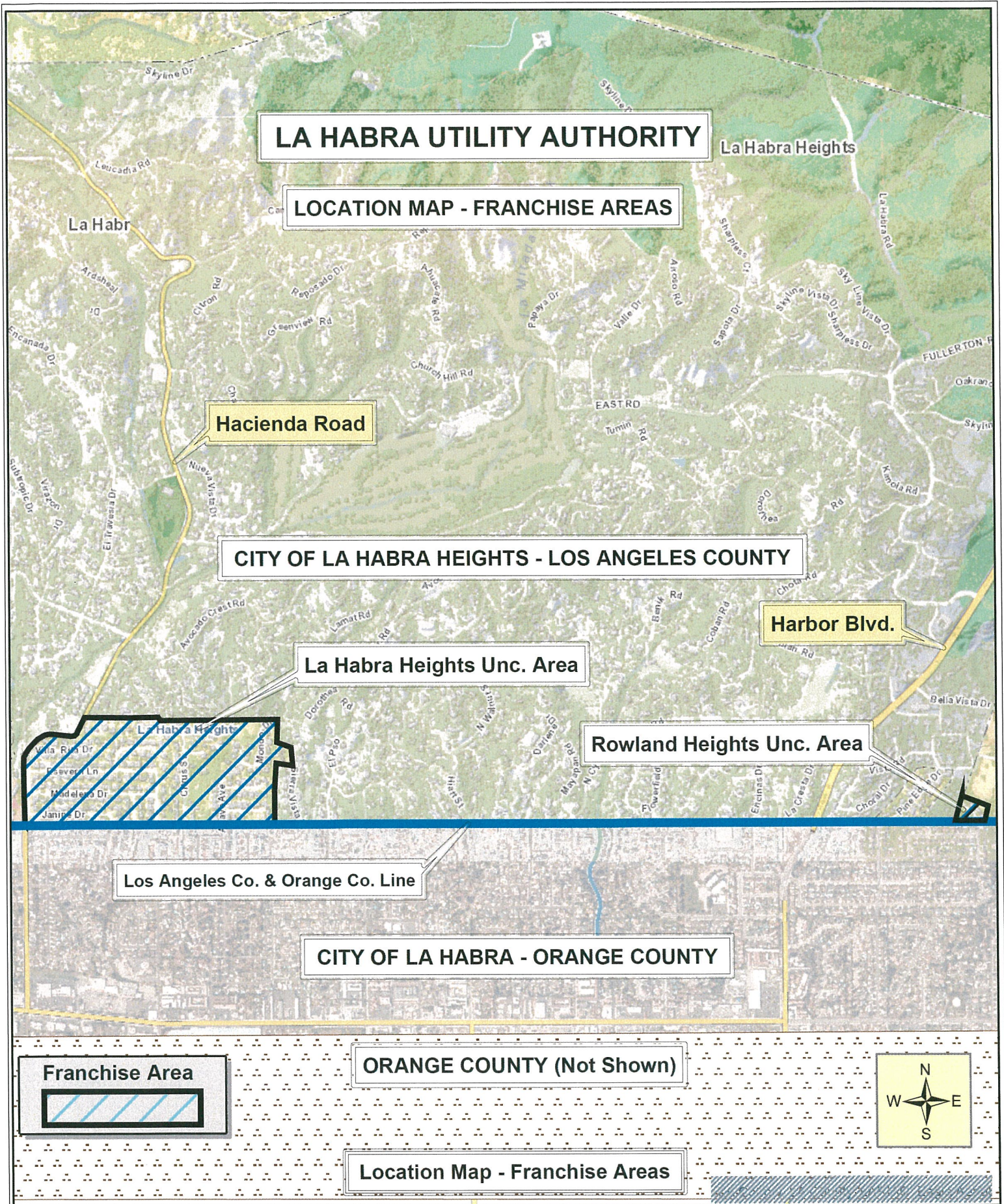
SECTION 6. Relocation of Pipelines.

In the event the Franchisee receives notice to relocate its pipelines and appurtenances pursuant to Section 16.52.290 of the County Code, in addition to all obligations of Franchisee and rights of the County under Sections 16.38.450 and 16.52.290 of the County Code, if Franchisee neglects or fails to relocate its facilities in a timely manner after receipt of any such notice, Franchisee shall be responsible for, and shall reimburse the County, city, or other applicable public entity, for any and all additional costs or expenses incurred by the County, city, or other applicable public entity due to, or resulting from, such delay in relocation of the facilities.

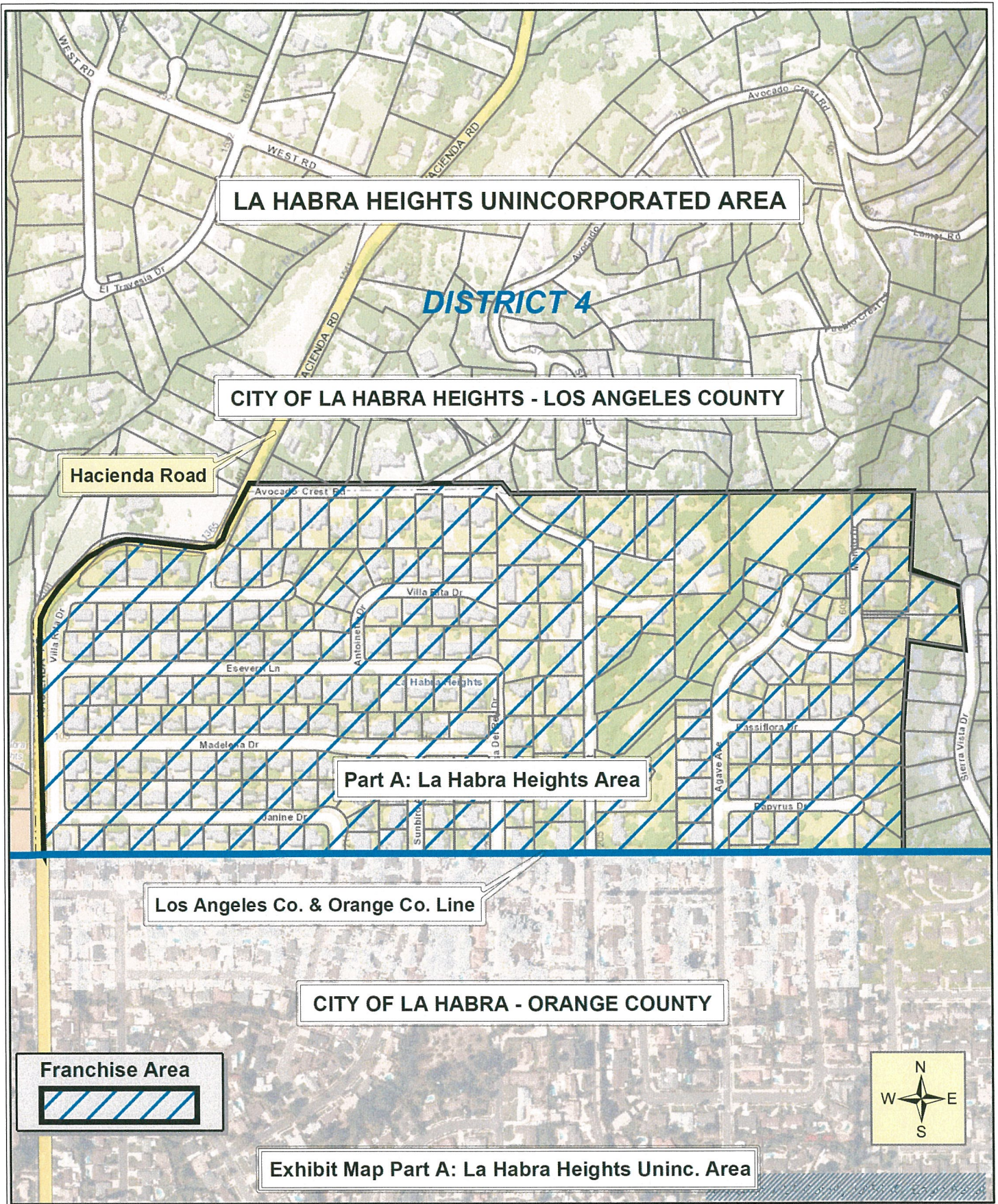
SECTION 7. Pipeline Franchise Ordinance.

In addition to the terms and conditions stated herein, and except as expressly excluded herein, this franchise is granted under all of the terms and conditions contained in the County Pipeline Franchise Ordinance, Title 16, Division 3A, of the Los Angeles County Code, as codified in 1978 and amended to date, which is incorporated herein by reference, as it may hereafter be amended. In the event the terms and conditions of this franchise conflict with the terms of the County Pipeline Franchise Ordinance, the terms and conditions hereof shall control.

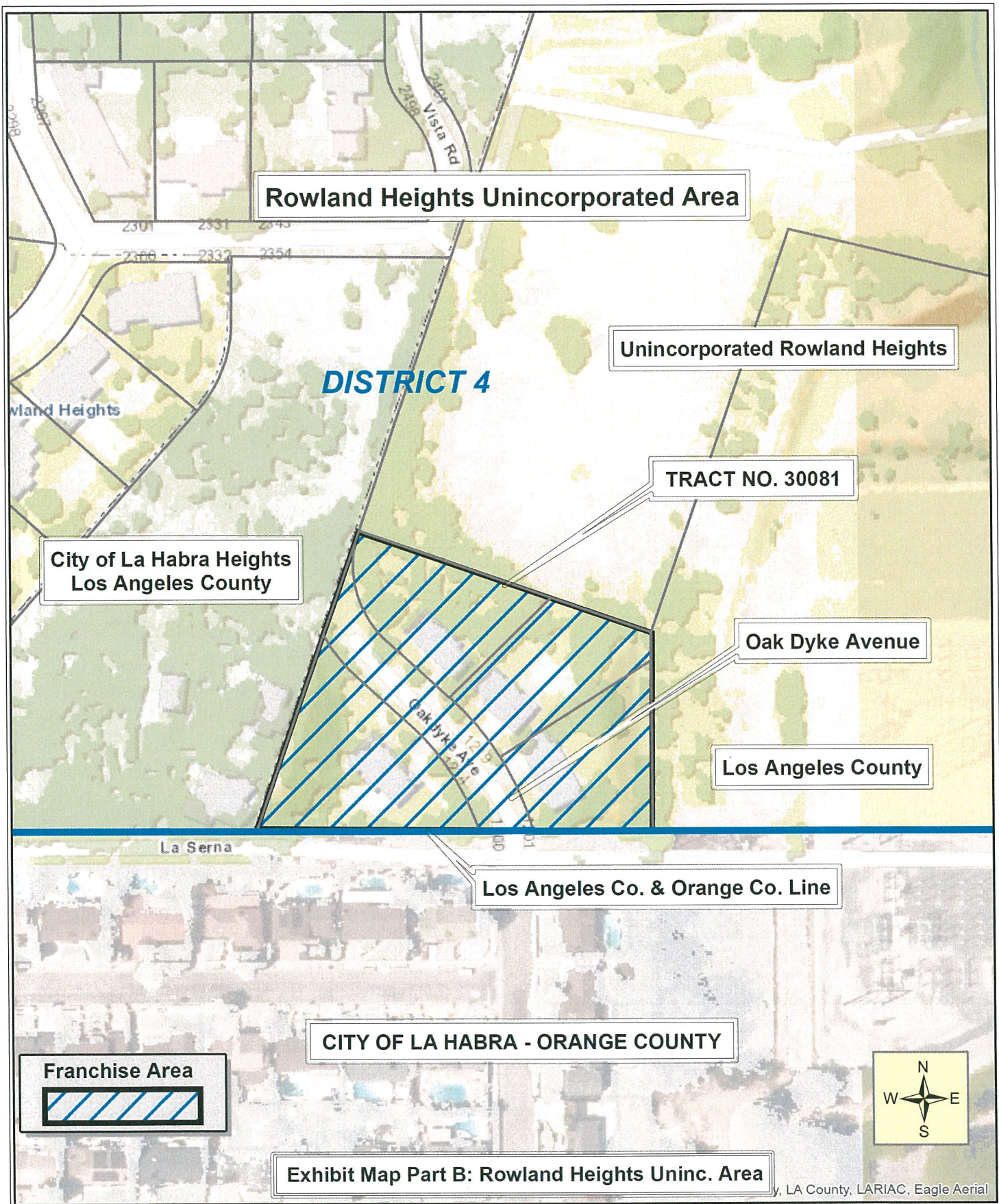
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Date September 2016	COUNTY OF LOS ANGELES - CHIEF EXECUTIVE OFFICE LA HABRA UTILITY AUTHORITY LOCATION MAP - FRANCHISE AREAS	La Habra Utility Authority (Amend 2010-0028F)
Supervisorial District 4th District		Agent R. Ball



Date September 2016	COUNTY OF LOS ANGELES - CHIEF EXECUTIVE OFFICE LA HABRA UTILITY AUTHORITY LA HABRA HEIGHTS UNINCORPORATED AREA	La Habra Utility Authority (Amend 2010-0028F)
Supervisory District 4th District		Agent R. Ball



Date September 2016	COUNTY OF LOS ANGELES - CHIEF EXECUTIVE OFFICE LA HABRA UTILITY AUTHORITY ROWLAND HEIGHTS UNINCORPORATED AREA	La Habra Utility Authority (Amend 2010-0028F)
Supervisory District 4th District		Agent R. Ball